

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: ARIZONA

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LIENS AND ADJUSTMENTS OR RECOVERIES

1. **The State uses the following process for determining that an institutionalized individual cannot reasonably be expected to be discharged from the medical institution and return home:**

N/A

- 2 **The following criteria are used for establishing that a permanently institutionalized individual's son or daughter provided care as specified under regulations at 42 CFR §433.36(f):**

N/A

3. **The State defines the terms below as follows:**

**estate**--Pursuant to Section 1917 of the SSA, "estate" means all real and personal property and other assets included within the individual's estate, as defined for purposes of State probate law. Pursuant to Arizona Revised Statute § 14-1201 estate includes "the property of the decedent, trust or other person whose affairs are subject to this title as originally constituted and as it exists from time to time during administration. As it relates to a spouse, the estate includes only the separate property and the share of the community property belonging to the decedent, or person whose affairs are subject to Title 14 of the Arizona Revised Statutes".

**individual's home** N/A

**equity interest in the home** N/A

**residing in the home for at least one or two years on a continuous basis, and**  
N/A

**lawfully residing** N/A

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**4. The State defines undue hardship as follows:**

AHCCCS' undue hardship policy follows federally suggested guidelines. Undue hardship criteria has been established for those instances when: a) the estate contains real or real and personal property; or b) the estate contains only personal property.

The two criteria for undue hardship are:

- 1) *Real property or both real and personal property:* Undue hardship is deemed to exist if:
  - the property is residential property and the surviving heir(s) owns a business that is located at the property;
  - the business has been in operation at the property for at least 12 months preceding the death;
  - the income from the business provides more than 50% of the surviving heir(s) livelihood; and,
  - the recovery of the property would result in the surviving heir(s) to the estate losing their means of livelihood.

Undue hardship also exists if the surviving heir(s) currently resides in the residence, resided in the residence at the time of the death, has consistently made the residence his/her place of residence for the 12 months immediately preceding the death and no other residence is owned by him/her.

AHCCCS may waive its claim against the real property. However, this waiver will not preclude a claim against the remainder of the estate.

- 2) *Personal property only:* Undue hardship exists if the surviving heir's gross annual income for his/her household size is within 100% of the federal poverty level, including any new source of income which may not yet have been received, and no other real property is owned.

When supporting evidence meets either of the criteria above, AHCCCS' TPL Contractor, will determine to what extent the claim will be compromised or waived. Factors in making this determination include:

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- financial/medical hardship to the surviving heir(s);
- income and resources of the surviving heir's household and whether gross annual income and resources are within 100% of the federal poverty level;
- value and type of assets in the estate;
- amount of AHCCCS' claim; and,
- whether other creditors have filed against the estate or foreclosed on the property.

**5. The following standards and procedures are used by the State for waiving estate recoveries when recovery would cause an undue hardship, and when recovery is not cost-effective:**

In cases when undue hardship is found, AHCCCS will waive or compromise a claim based on a determination of undue hardship in accordance with AHCCCS' Undue Hardship Policy. When an undue hardship exists, the decision to compromise or waive the claim takes into consideration:

- financial/medical hardship to the surviving heir(s);
- income and resources of the surviving heir's household and whether the gross annual income and resources are within 100% of the federal poverty level;
- value and type of assets in the estate;
- amount of AHCCCS' claim; and,
- whether other creditors have filed against the estate or foreclosed on the property.

There is no initial cost threshold. Cases are worked in the order of priority using the amount of the AHCCCS claim and the amount of estate assets as guidelines. At the point of litigation, a cost threshold of \$5,700 is considered, and the amount of the claim, the assets in the estate, creditor status, as well as other factors, are used in determining whether to apply the \$5,700 cost threshold.

**6. The State defines cost-effective as follows (include methodology/thresholds used to determine cost-effectiveness):**

No initial cost threshold is applied and all potential cases are worked for recovery. However, a \$5,700 litigation cost threshold has been established which is applied at the point of litigation when a determination is made as to whether it is cost effective to pursue recovery. Factors taken into consideration in determining whether to apply the \$5,700 cost threshold include the claim amount and priority of the claim, other creditors and amounts of their claims, total estate assets, and the number of surviving

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heir(s) to the estate. The litigation threshold of \$5,700 is based on the following methodology:

- \$2,000 allowance for claim litigation threshold;
- \$3,200 for attorney fees; and,
- \$500 for miscellaneous expenses (i.e., preparing the case for turnover to attorneys, briefing attorneys, negotiations with estate executor, etc.).

**7. The State uses the following collection procedures (include specific elements contained in the advance notice requirement, the method for applying for a waiver, hearing and appeals procedures, and time frames involved):**

a) The TPL Contractor completes all estate recovery activities for AHCCCS. Potential recovery cases are identified using AHCCCS' automated eligibility systems and other resources (e.g., estate executor, public fiduciary, probate court, etc.). In cases where no known probate has opened, the TPL Contractor files a Demand for Notice with the appropriate county probate courts to inquire whether an estate has opened for probate.

b) When an estate has opened for probate, the TPL Contractor files a notice of claim with the court, and sends notice to the estate executor providing:

- information about the claim;
- the authority for the claim;
- exemptions from recovery;
- the undue hardship filing process for consideration of waiver or compromise of the claim;
- the supporting evidence that is required to be filed with the undue hardship application;
- to whom and where to file the application and supporting evidence; and,
- information about the surviving heir's appeal rights and the appeal process.

A completed undue hardship application form and supporting evidence must be filed within 30 days of the date of the notice to the estate executor. A completed application means that the application form has been completed in its entirety, and all evidence which supports the household's circumstances has been provided to the TPL Contractor within the 30 day time frame. When the required documents are not filed within the 30 day time frame, the application is

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considered incomplete and will be denied and the full amount of the claim will remain in force. The denial notice issued by the TPL Contractor, includes information about the reason(s) for the denial, the appeal rights and process, and allows the surviving heir(s) an additional 5 working days to file the required documents. If the required documents are filed within the five working days, the application is considered complete and the undue hardship application is processed.

- c) When a complete and timely application is received, the TPL Contractor reviews supporting evidence and makes a determination. The surviving heir(s) is sent a notice of the decision which includes information about the appeal rights of the heir(s) and the grievance process. Any grievance must be filed within 35 days from the date of the notice.
- d) If a grievance is filed, AHCCCS' Office of Grievance and Appeals (OGA) shall adjudicate the grievance and/or schedule an administrative hearing. As a result of the administrative hearing process, AHCCCS shall render a Decision of the Director and a Final Decision in accordance with AHCCCS Administrative Rules. The TPL Contractor shall represent AHCCCS in grievance proceedings concerning estate recovery issues. Based on the AHCCCS Decision, the TPL Contractor shall notify the estate executor of any change in the claim amount.